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July 14, 2023

Via ECF

Hon. Lorna G. Schofield, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Lenny Javier v. New York City Transit Authority, et al.*
Civ. No.: 22-cv-11010 (LGS)(RWL)

Dear Judge Schofield:

My firm and Sonin & Genis, LLP are co-counsel for plaintiff Lenny Javier in this case. We write jointly with defendants' counsel to submit the instant status letter, per the Court's May 31, 2023 Order at ECF 33, which directed the parties to include "the information required in the Court's Individual Rules as well as the number of depositions taken, the identify of deponents and mutually acceptable dates for deposing them."

(a) What discovery has taken place:

1. What discovery requests have been propounded, who propounded each request and on what date:

On April 4, 2023, Defendants served (1) Interrogatories and (2) Requests for Production of Documents.

On April 29, 2023, Plaintiff propounded three sets of discovery requests: (1) Interrogatories; (2) Requests for Production of Documents; and (3) Requests for Admission and related Requests for Production of Documents.

2. What responses were made, who made each response and on what date:

Plaintiff responded to Defendants' Interrogatories and Requests for Production of Documents on May 4, 2023.

Defendants responded to Plaintiff's Interrogatories and Requests for Admission on May 30, 2023. Defendants responded to Plaintiff's Requests for Production of Documents by regular mail on June 30, 2023; however, the response was not sent electronically until July 10, 2023.

3. The volume of documents produced, who produced the documents and when:

Plaintiff has produced documents Bates No. Javier 1 – 1019. The documents were produced with Plaintiff's responses to Defendants' Interrogatories and Requests for production of documents on May 4, 2023. The documents consisted of: photographs of plaintiff's injuries, medical records from seven different facilities, and medical bills and other out of pocket expenses.

Defendants have produced documents Bates No. NYCT-JA-1 to NYCT-JA-363. Documents Bates No. NYCT-JA-1 to NYCT-JA-82 were served with Defendants' initial disclosures on April 4, 2023, and documents bates no NYCT-JA-83 to NYCT-JA-363 were served with Defendants' responses to Plaintiff's Requests for Production of Documents on June 30, 2023 (but not served electronically until July 10, 2023).

(b) The procedural history to date:

1. What pleadings have been filed, who filed each pleading and on what date:

Plaintiff filed her Notice of Claim on December 9, 2021. Plaintiff filed her Complaint in this diversity action on December 31, 2022 (ECF 1). Defendants New York City Transit Authority, Metropolitan Transportation Authority, and Hopeton Kiffin filed their Answer on February 7, 2023 (ECF 14).

2. What motions, if any, have been filed, who filed each motion and on what date each motion was filed:

On April 5, 2023, Defendants filed a pre-motion letter that requested a conference in anticipation of filing a motion for leave to commence a third-party action against Anthonia Egegbara for indemnification and contribution pursuant to Federal Rule of Civil Procedure 14(a). (ECF 28) The Court denied this letter motion on April 25, 2023. (ECF 31).

On May 30, 2023, the parties filed a joint status letter in which Defendants requested an additional 30 days to respond to Plaintiff's Requests for Production of Documents, and the parties requested an additional 30 days to complete discovery (ECF 32). The Court denied the requests in the memorandum order dated May 31, 2023. (ECF 33).

(c) The parties' plans to ensure that they meet the Court ordered discovery deadlines:

On June 20, 2023, plaintiff served a letter regarding defendants' failure to respond to plaintiff's Requests for Production of Documents, and another letter outlining certain deficiencies in defendants responses to plaintiff's Requests for Admission. Plaintiff requested that defendants let us know when they were available to meet and confer.

Defendants' counsel responded on June 30, 2023 that he would not be available to meet and confer until after July 10, 2023, due to his vacation schedule.

Defendants just emailed their responses to plaintiff's Requests for Production of Documents on Monday, July 10, 2023. Plaintiff is in the process of reviewing same and outlining specific responses that were not properly responded to so that the parties can meet and confer on this issue as well.

Regarding depositions, none have yet been conducted, but Plaintiff's deposition is scheduled for August 3, 2023, and the deposition of the defendant train operator, Hopeton Kiffin, is scheduled for August 7, 2023.

Plaintiff also plans to depose numerous other NYCTA witnesses regarding the failure to install safety devices like platform barriers, which could have prevented this incident. However, until the paper discovery disputes are resolved, plaintiff is unable to identify the individuals she intends to depose.

The parties have held several telephonic meet and conferrals including on May 26, 2023 and June 1, 2023, and are presently scheduling another session to resolve disputes with respect to the need for ESI and any protocols and documentary discovery, the number of witnesses to be deposed and the amount of time for said depositions. Absent agreement, plaintiff intends to seek leave to file a motion with respect to the scope of discovery.

Respectfully submitted,



Elliot D. Shields

cc: Andrew P. Keaveney
Attorney for Defendants

Bob Genis
Co-counsel for plaintiff